SELDEN AND OTHERS v. CAMP AND OTHERS.—Decided at Richmond, January 20, 1898.—*Harrison*, J. Absent, *Cardwell*, J:

1. CONTRACTS TO PAY MONEY—*Time not of essence of contract—Relief—Lease—Right of renewal—Conditions precedent.* Mere default in the payment of money at a stipulated time generally admits of compensation, and hence the time of payment is rarely of the essence of the contract, and when time is not of the essence of the contract, and compensation can be made, courts of equity can grant relief even against the failure to perform punctually conditions precedent. But such relief will not be granted at the instance of a party who has been guilty of gross negligence. In the case of a lease for ninety-nine years, renewable for ever, upon payment of an annual ground rent on a given day each year, and taxes, and on the payment of one year's rent extraordinary and the costs of preparing contract at the end of the first period, with right of the landlord to re-enter at any time during term for default in payment of rent for six months, and hold the premises until the rent and taxes are paid, the mere failure at the end of the first period to pay the one year's rent extraordinary and costs, through ignorance of the fact that the term had expired, and, under the circumstances of this case, does not entitle the landlord to re-enter and take possession of the premises, and a court of equity will compel the lessors to perform their covenant to renew.

CHESAPEAKE & OHIO RAILWAY CO. v. CHAMBERS.—Decided at Richmond, January 20, 1898.—*Keith*, P. Absent, *Riely* and *Cardwell*, JJ:

1. CONDEMNATION FOR DAM AND GUARD-BANK—*Failure to repair—Resulting damages.* Although damages may have been regularly assessed and paid for land condemned for a dam, abutment, and guard-bank, and for the increased liability to overflow the residue of the land of the plaintiff, the defendant is still liable for any injury resulting to the plaintiff by reason of defendant's failure to keep the guard-bank in a reasonably safe and good condition.

2. FAILURE TO REPAIR GUARD-BANK—*Resulting damages—Measure of.* In an action to recover damages for an injury inflicted on the plaintiff by reason of the negligent failure of the defendant to keep in order a guard-bank by reason whereof plaintiff's land was flooded, plaintiff can only recover for the injury suffered in respect to the land after the date of his purchase thereof, and before the institution of the suit.

NEW YORK LIFE INS. CO. v. TALIAFERRO.—Decided at Richmond, January 20, 1898.—*Buchanan*, J. Absent, *Cardwell*, J:

1. EVIDENCE—*Objections to—Introducing the same evidence.* If a party objects to the introduction of evidence which is admitted, and afterwards introduces the same evidence himself, it is no ground for reversing the judgment, although the evidence objected to was incompetent.

2. INSTRUCTIONS BASED ON ONLY PART OF THE EVIDENCE. It is not error to refuse an instruction based upon only a part of the evidence which tends to prove the fact at issue, and omits altogether other evidence tending to prove the same fact.

3. VERDICT—*Conflicting evidence—Benefits and burdens of a contract.* This court will not set aside the verdict of a jury and award a new trial on the ground that the verdict was contrary to the law and evidence, where the evidence is conflicting, and it appears that there was evidence sufficient to justify the verdict. In the case at bar the defendant refused the request of the plaintiff to rescind the contract out of which the plaintiff's claim grew, and insisted on retaining the benefit of it, and it must therefore bear its burdens also.

SMELTZ BROS. v. RIX & BENTLEY.—Decided at Richmond, January 20, 1898.—*Keith*, P. Absent, *Cardwell*, J:

1. APPEALS AND ERROR—*Amount in Controversy.* The amount in controversy on an appeal from a decree which perpetually enjoins a sale under a deed of trust given to secure notes amounting to $500, is the whole sum secured.

2. NEGOTIABLE PAPER—*Changes — Alterations.* The maker of a negotiable note who consents to a change of the date of the note cannot thereafter complain of such change as an alteration.

3. DEED OF TRUST—*Security for endorsers or sureties—Security for notes.* Where a deed of trust is given to secure sureties or endorsers and they have incurred no loss or damage the security does not enure to the benefit of the creditor, but the evidence in the case at bar shows that the deed of trust was made by the makers of two notes to secure the payment of the notes themselves, and not merely as security for the endorsers thereof.

TOWNSEND AND OTHERS v. OUTTEN AND OTHERS.—Decided at Richmond, January 20, 1898.—*Buchanan*, J. Absent, *Cardwell*, J:

1. DEED—*Release of interest—Subsequent assertion of title.* A grantee in a deed who has released all interest in the property conveyed, in consideration of the conveyance to her of other property by the grantor, which last mentioned conveyance was made on condition that she should execute such release, cannot thereafter assert any title or interest under the first mentioned deed.

2. DEEDS—*Partition—Covenant for quiet enjoyment.* A deed which contains no clause of conveyance, but recites that the parties thereto have made partition and division between them of the lands therein mentioned, of which they were seised in fee, and declares what part each is to have, and covenants that neither of them, nor any person claiming under either shall disturb the other in the possession and enjoyment of the part allotted to him, is a mere deed of partition.

3. DEEDS—*Title subsequently acquired—Estoppel—Case in judgment.* A grantor is estopped to claim a title subsequently acquired not only where he has conveyed with a warranty, but also where the deed of conveyance recites, or affirms, expressly or impliedly, that the grantor is seised of a particular estate which the deed purports to convey, and upon the faith of which the bargain is made. But this rule has no application to the case in judgment, as the appellees are not claiming any portion of the land allotted to the grantor of appellants in the deed of partition between him and the grantor of the appellees.